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January 13, 1999

VIA HAND-DELIVERY

Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-B204
Washington, DC 20554

RE: CC Docket No. 96-45

Dear Secretary:

Enclosed for filing please find an original, 4 copies and a WordPerfect 5.1 version on disk of the "Reply Comments of the National Association of State Utility Consumer Advocates Concerning the Second Recommended Decision" in the above referenced proceeding.

Please receipt-stamp the extra copy of the Reply Comments and return it to me in the enclosed self-addressed stamped envelope. Any questions regarding this matter may be directed to the undersigned.

Respectfully submitted,

Charles A. Acquard
Executive Director

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Enclosure

cc: All parties of record

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Universal Service Federal-State	)	CC Docket No. 96-45
Joint Board	)	DA 98-2410

REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF
STATE UTILITY CONSUMER ADVOCATES
CONCERNING THE
SECOND RECOMMENDED DECISION

Dated: January 13, 1999

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I. INTRODUCTION

The National Association of State Utility Consumer Advocates ("NASUCA") submits these Reply Comments. NASUCA is a national association of 42 state authorized members representing consumers in 39 states and the District of Columbia. NASUCA members have been active participants at the state and federal level concerning many universal service issues.

On July 19, 1998 the FCC referred to the Joint Board a number of issues concerning the creation of a federal Universal Service Fund ("USF"). In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Second Recommended Decision, November 25, 1998, at ¶ 11. Many of these issues related to the extent to which it would be necessary to shift interstate cost recovery from interstate carrier access charges to an interstate USF. NASUCA files these Reply Comments in order to respond to Comments filed by other parties concerning the alleged requirement that a large amount of the costs presently recovered through carrier access charges must be shifted to a federal Universal Service Fund ("USF").

II. SUMMARY

III.

A number of parties argue that the FCC must require interstate joint and common costs to be recovered from a federal USF. Such shifting of costs to a USF is often linked to an end user surcharge guaranteed to recover all such costs. NASUCA opposes such action as not supporting the essential requirement of Section 254 to preserve and advance affordable universal service in high cost areas at affordable and just and reasonable rates.

The Telecommunications Act of 1996 ("1996 Act") clearly requires the Commission to act in order to promote the achievement of universal service even as competition advances in the local market. Section 254(k) also protects universal service against bearing more than a reasonable share of joint and common costs. This restricts against the consumer surcharges and

the elimination of joint and common cost recovery from carrier access charges advocated by many carriers. The creation of an explicit USF does not in any manner sanction the creation of universal service surcharges which will only raise the cost universal service that the USF was supposed to protect against.

III. COMMENTS

A. Universal Service Fund Charges Should Not Be Used to Recover Joint and Common Which Are Necessary to the Provision of Interstate Switched Access Service to Interexchange Carriers.

In many of the Comments filed, various parties argue that the Commission should revise the recommendations proposed by the Joint Board, require carrier access rates to be reduced to incremental cost and require that all of the revenue lost through such access charge reductions be recovered through a federal Universal Service Fund. The United States Telephone Association ("USTA") has proposes that $4.3 Billion in access charges should be removed from interstate carrier access charges through the elimination of the interstate Carrier Common Line Charge ("CCLC") and the interstate Primary Interexchange Carrier Charge ("PICC"). USTA Com. at Att. A. This $4.3 Billion in access reductions would be replaced by an equivalent federal universal service surcharge of 2.15% applicable to all state and interstate telecommunications revenues appearing on consumers' bills. USTA Com. at Att. B at 2-3. GTE Service Corporation ("GTE") would take such a surcharge on consumer bills one step further and also eliminate the claimed "implicit support flow" from traffic sensitive interstate access rates in the amount of an additional $1.6 Billion. GTE Com. at 4. This would bring the GTE proposed access restructuring through the Universal Service Fund to $5.9 Billion.

Various parties argue that such access rate restructuring is required by the directive in the 1996 Act that "there should be 'specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.'" SBC Communications ("SBC") Com. at 3 citing 47

U.S.C. § 254(b)(5). BellSouth Corporation ("BellSouth") also contends that much of the implicit support embedded in interstate access charges is generated by the allocation of a portion of telecommunications plant to the interstate jurisdiction. BellSouth Com. at 3 n.6. Thus, BellSouth alleges that the fact that 25% of loop plant is allocated to the interstate jurisdiction through separations is part of the universal service support flow that should be addressed by shifting loop plant recovery from access charges to the Universal Service Fund ("USF"). Id. NASUCA submits that it is incorrect to assume that all loop costs recovered through the interstate jurisdiction represent universal service support that must be recovered through the federal USF.

Many of these Comments cited above simply allow access rate reductions to masquerade as universal service reform. It may be appropriate for the FCC to recognize the excessive profits that many LECs are now earning in the interstate jurisdiction and require reductions in the interstate access charges, including the Subscriber Line Charge ("SLC"). However, access charge reform neither requires nor justifies the exclusion of joint and common costs, e.g. loop costs, from carrier access rates. It is appropriate that interstate carriers that use the loop to originate and terminate interstate calls should pay a portion of that cost which their business depends upon. However, Public Counsel Hogerty has explained that currently 68% of all interstate access revenues that have been designed to recover loop costs are borne - not by the interstate carriers - but by the universal service consumers through the SLC.[1]

As the Joint Board recognized, the Commission has the authority to revise interstate access rates. However, the need to reform interstate access charges should not be confused with the statutory obligation to support affordable universal service in the rural and high cost portions of the United States. Under no circumstances should the FCC thwart the intent of Congress by

[1] Separate Statement of Public Counsel Hogerty at 2 citing FCC July, 1998 "Trends in Telephone Service" comparing CCLC, PICC and SLC revenues related to universal service.

using the Universal Service Fund as a basis for raising local telephone rates. Shifting access revenue to an end user surcharge would also violate the 1996 Act that requires local rates to be made affordable through a USF rather than by requiring local rate increases through USF surcharges. As argued below, NASUCA submits that shifting all joint and common costs to universal service would explicitly violate 47 U.S.C. § 254(k) of the 1996 Act.[2]

B. NASUCA Supports the Recommendation of the Joint Board that the Commission Is Not Required to Use the Universal Service Fund to Reduce Access Rates.

The Joint Board has properly determined that the focus of any federal USF must be upon the preservation and advancement of universal service. The Joint Board explained:

> The Telecommunications Act of 1996 ("1996 Act") explicitly recognized the need for federal and state support to "preserve and advance universal service."[3] In the 1996 Act, legislators recognized that existing support mechanisms could be threatened as effective competition materializes. Congress also made clear in the 1996 Act that federal and state regulators together must ensure that universal service is preserved and advanced as we move from a monopoly to a competitive market.

Second Recommended Decision at ¶ 1. The Joint Board explained that universal service mechanisms may be necessary to achieve universal service as competition develops as follows:

> As effective competition develops for high-volume, urban customers, one consequence may be erosion of the implicit support system that protects consumers in rural, insular and high cost areas from unaffordable rates. The Joint Board recommends a federal high cost support mechanism for non-rural carriers that enables rates to remain affordable and reasonably comparable, even as

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[2] Any universal service rate increase through a USF surcharge would also require the FCC to conduct an affordability analysis consistent with 47 U.S.C. § 254(b) and (I). In the Matter of Universal Service Federal-State Joint Board, Docket No. CC 96-45, May 8, 1997, Report and Order, May 8, 1997, 62 Fed. Reg. 32862, June 19, 1997.

[3] 47 U.S.C. § 254(b).

> competition develops, but that is no larger than necessary to satisfy that statutory mandate.

Second Recommended Decision at ¶ 3. The Joint Board explained that "the primary purpose of federal support should be to ensure that rates remain affordable and reasonably comparable throughout the nation." Id. at ¶ 33.

The Joint Board also recognized that some past Commission decisions have coupled universal service support with reduced interstate access charges. Id. at ¶¶ 20-21. However, the Joint Board did not propose that universal service support must be used to reduce interstate access charges. The Joint Board recognized that the Commission has the authority to reduce access charges, but recommended that, if it were to use universal service support to do so, the CCLC, PICC, or SLC should be reduced. Id. at ¶ 23. NASUCA emphasizes that the Joint Board suggested that, if access charges are to be reduced, the Commission should consider reducing the SLC as well as the CCLC and PICC. As the interstate SLC functions as an additional charge added on top of the intrastate charge for local service, reducing the SLC would promote the goal of making universal service affordable.

Most importantly, the Joint Board has also recognized that any effort to reduce carrier access charges, such as the CCLC and PICC, should not harm the goals of universal service. The Joint Board explained:

> When considering such recommendations, the Commission should give due regard to the requirement that universal service shall bear no more than a reasonable share of joint and common costs. Moreover, the Commission should ensure that any efforts to replace implicit support in interstate access charges with explicit support do not jeopardize the reasonable comparability standard, or harm consumers generally, or any class of consumers in particular.

Id. NASUCA stresses that access reform should not come at the cost of raising universal service rates. This is the great flaw in the proposals of USTA and GTE which would reduce carrier access charges by surcharging all consumers directly on a dollar for dollar basis for all lost

access revenues. The Joint Board is correct to caution that reducing carrier access charges by surcharging consumers would not be consistent with the goals of the 1996 Act.

Moreover, it is important to recognize that reducing costs recovered from interstate carrier access charges may effectively increase the proportion of joint and common costs that are recovered from universal service. Thus, the Joint Board correctly emphasized that "the Commission should give due regard to the requirement that universal service shall bear no more than a reasonable share of joint and common costs." Id. This cost recovery principle is mandated by Section 254(k) of the 1996 Act. Reducing carrier access charges, while increasing costs recovered through universal service rate, may well run afoul of the § 254(k) principles embedded within the 1996 Act. This issue will also be addressed at further length below.[4]

C. The Telecommunications Act of 1996 Does Not Require Carrier Access Rates to Be Reduced to Incremental Cost Without Any Contribution to the Recovery Of Joint and Common Costs.

NASUCA submits that the Section 254 requirements emphasize that the foremost goal of the creation of a federal USF is the preservation and advancement of universal service - not the reduction of interstate carrier access charges. The 1996 Act is silent as to what action and when the Commission must take with respect to access reform.

The Commission must recognize that the purpose of Section 254 was to maintain universal service in the United States. The 1996 Act requires that:

> Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably

[4] Universal service rates can effectively be increased by applying a surcharge to local rates or by increasing the interstate SLC. GTE proposes that the SLC is the most efficient method of recovering interstate loop costs and that the PICC and CCLC are federal universal service mechanisms. GTE Com. at 8-9. As noted above, GTE has proposed a revenue surcharge on all interstate and intrastate revenues.

> comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

47 U.S.C. § 254(b)(3). "The Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable." 47 U.S.C. § 254(I). The mechanism for accomplishing this goal was as follows: "There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service." 47 U.S.C. § 254(b)(5). Furthermore, as noted above, Congress applied an additional protection against shifting costs away from competitive services and onto universal service and all services that are not competitive through 47 U.S.C. § 254(k). This subsection states:

> A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

47 U.S.C. § 254(k). As the Joint Board has explained above, any effort to remove costs from carrier access rates should carefully consider that universal service cannot be required to bear more than a reasonable share of joint and common costs. Second Recommended Decision at ¶ 23. Recovering all joint and common loop costs from universal service - and not recovering any such costs from carrier access charges - would plainly violate the requirements of Section 254(k).

It is often asserted, as stated in the Comments cited above, that carrier access rates are priced above "cost" and the implicit universal service support in access must be removed from those rates. This assertion appears to rest upon the fundamental assumption that carrier access rates should recover none of the joint and common costs necessary for carriers to originate and terminate interexchange service on the local network.

In this view, loop costs must be recovered exclusively from the end user subscribing to local service and not from the carriers using that same loop to originate and terminate

interexchange traffic. Thus, carrier access charges under this assumption would only recover the incremental costs of delivering the interexchange call, and would recover none of the joint and common costs of the loop used by the interexchange carrier. NASUCA rejects the argument that 100% of joint and common loop costs should be recovered through basic local exchange service. See, 47 U.S.C. § 254(d). There is no reference to any such mandate for interexchange carrier access reform in the 1996 Act.

As the Joint Board explained, the primary goal of § 254 of the 1996 Act was to preserve and advance universal service as the telecommunications industry moves into a competitive environment. It is of primary importance that the test of any universal service policy must be that it preserves and advances universal service. NASUCA has great concern that simply stripping cost recovery from carrier access charges, placing these same dollars into a federal USF surcharge, and paying those funds to Local Exchange Carriers (LECs) will do nothing to preserve, much less advance, universal service.[5] In fact, it will jeopardize universal service by raising basic rates.

NASUCA supports the views expressed by a number of Senators in a letter to the Joint Board concerning this same manner.[6] That letter stated:

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[5] NASUCA is also generally concerned about shifting cost recovery from access rates to a USF. Placing access costs in a federal USF may very well insulate such costs from whatever market forces may develop. Placing these costs into a USF - particularly where they are recovered through end user surcharges - will tend to enshrine these costs as a federal entitlement. Once these charges are imposed by federal order it will likely be very difficult to force their later reduction or elimination.

[6] On October 29, 1998, Senators Dorgan, Brownback, Rockefeller, Kerrey, Daschle and Johnson wrote a letter to the members of the Joint Board. This letter stated that: "Preserving and advancing universal service, faithful to the directives of the Telecommunications Act, should be the top priority of this Commission. We hope that the Joint Board will affirm this notion and stress the critical importance of maintaining an affordable ubiquitous telecommunications network through universal service." Letter at 1.

> (2) **Identifying necessary implicit support mechanisms and making them explicit must not result in increased local rates.** For reasons discussed below, the Telecommunications Act's requirement that implicit support be made explicit is one of the most misinterpreted provisions of the Act.
>
> . . .
>
> The Congress never intended for universal service reform to result in rate increases and it is imperative that the Commission place this objective above all others in determining explicit support.

Letter at 3.

The federal USF should not become another vehicle to accomplish the type of access reform rate rebalancing that is often advocated before the FCC. The Senators' letter supports the view that Section 254 was intended as a means to avoid universal service rate increases not as a means of shifting access costs to end user surcharges. This is the essential purpose of Section 254 and should not be obscured by proposals for access reform.

D. The FCC and State Commissions Have Recognized Loop Costs as Shared or Common Costs of Many Services Including Carrier Access Charges.

The FCC has determined that loop costs are joint or common costs to provide various services:

> The term "common costs" refers to costs that are incurred in connection with the production of multiple products or services. and remains unchanged as the relative proportion of those products or services varies (*e.g.*, the salaries of corporate mangers). Such costs may be common to all services provided by the firm or common to only a subset of those services or elements. If a cost is common with respect to a subset of services or elements, for example, a firm avoids that cost only by not providing each and every service or element in the subset.
>
> . . .
>
> As discussed in greater detail below, separate telecommunications services are typically provided over shared network facilities, the costs of which may be joint or common with respect to some

> services. The costs of local loops and their associated line cards in local switches, for example, are common with respect to interstate access service and local exchange service, because once these facilities are installed to provide one service they are able to provide the other at no additional cost.

In the Matter of: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, August 8, 1996 at ¶¶ 676, 678 (emphasis added) ("Local Competition Order"). Thus, the FCC has ruled the loop is a joint or common cost. Current FCC regulations also consider the loop as a joint or common cost of providing many services. The very definition of the loop in the FCC's access regulations is as follows:

> Subcategory 1.3 -- Subscriber or common lines that are jointly used for local exchange service and exchange access for state and interstate interexchange services.

47 C.F.R. § 36.154 (emphasis added). The FCC reaffirmed its position regarding the joint and common nature of the loop in a May 1995 decision concerning NYNEX's request for a waiver of the Part 69 access charge rules. In that decision, the Commission stated:

> While our jurisdiction extends only to interstate telecommunications services, the joint and common character of the facilities providing exchange access and local exchange service means that the regulatory climate for interstate telecommunications services affects the development of competition in the interstate access market (emphasis added).

In the Matter of NYNEX Telephone Companies Petition for Waiver, 10 FCC Rcd. 7445, May 4, 1995 at ¶ 39.

More recently, the FCC emphasized that the loop is a common cost in its own access reform proceeding as follows:

> For example, interstate access is typically provided using the same loops and line cards that are used to provide local service. The costs of these elements are, therefore, common to the provision of both local and long distance service.

In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, Notice of Proposed Rulemaking, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, December 24, 1997, ¶ 237 (emphasis added). The FCC applied this conclusion when it converted the CCLC into a flat rate PICC to cover loop costs. The FCC found that access services cause the creation of loop costs as follows:

> We reject claims that a flat-rated, per line recovery mechanism assessed on IXCs would be inconsistent with section 254 (b) that requires "equitable and nondiscriminatory contribution to universal service by all telecommunications providers." The PICC is not a universal service mechanism, but rather a flat-rated charge that recovers local loop costs in a cost causative manner.

In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, First Report and Order, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, May 16, 1997, ¶ 104 (emphasis added) ("Access Reform Order").

In the reform of the separations process, the FCC has also stated the economic reasoning and analysis which underpins this treatment of the loop as follows:

> Nearly all ILEC facilities and operations are used for multiple services. Some portion of costs nonetheless can be attributed to individual services in a manner reflecting cost causation. This is possible when one service, using capacity that would otherwise be used by another service, requires the construction of greater capacity, making capacity cost *incremental* to the service. The service therefore bears a causal responsibility for part of the cost. The cost of some components in local switches, for example, is

> incremental (i.e. sensitive) to the levels of local and toll traffic engaging the switch. Most ILEC costs, however, cannot be attributed to individual services in this manner because in the case of joint and common costs, cost causation alone does not yield a unique allocation of such costs across those services. The primary reason is that shared facilities and operations are usually capable of providing at least one additional service at no additional cost. In such instances, the cost is *common* to the services. For example, the cost of a residential loop used to provide traditional telephony services usually is common to local, intrastate toll, and interstate toll services. In a typical residence, none of these services individually bears causal responsibility for loop costs because no service places sufficient demands on capacity to warrant installation of a second loop.

In the Matter of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Notice of Proposed Rulemaking, CC Docket No. 80-286, November 10, 1997 at ¶¶ 14, 15. Thus, the FCC has often recognized that the loop is a common cost of access and other services as explained above.

State regulatory commissions have made similar determinations. For example, the Pennsylvania Public Utility Commission discussed this issue in its Universal Service Investigation, Docket No. I-00940035, January 28, 1997 Order. The Pennsylvania PUC stated in the January 28, 1997 Order as follows:

> We reaffirm our findings in our September 5, 1995 Order at Docket No. L-00950105 that the local loop is a "joint cost", not a direct cost of providing only those services included in the definition of B[asic] U[niversal] S[ervice]. It is used for a variety of services other than BUS and must be allocated among the services which utilize it. For universal service funding purposes, not allocating a portion of the local loop to all the services which utilize it fails to give recognition to the fact that the loop is used to provide many services in addition to BUS.
>
> This finding is consistent with our earlier rulings including Pennsylvania Public Utility Commission v. Breezewood Telephone Company, 74 Pa P.U.C. 431 (1991) wherein we stated:

> ...[W]e consider the costs associated with the loop from the central office to the customers premises a non-traffic sensitive joint cost.
>
> . . .
>
> AT&T states that the Recommended Decision is not clear on whether NTS costs are joint costs of providing local and toll services. It asserts that our Final Order should declare that dial-tone line costs are not "joint costs" of various services, but instead are the costs of establishing the physical connection between each customer's premises and the Company's central office.
>
> There is no dispute that both the local customer and AT&T make use of the same local network to complete both local and interLATA calls. If it were not for the existence of the local network, AT&T would be required to construct at considerable expense an alternative means of access to the local customer. We find that CCLC is the cost of compensating BTC for the use of the common line, and as such, CCLC clearly pays for a service received by AT&T. Thus, dial tone line costs are joint costs.

We reject the ILEC's arguments that the local loop is not a joint cost because other services which use the loop do not result in any additional cost. We do not find the arguments of Bell's expert witness Dr. [Alfred] Kahn persuasive on this point. In particular, we do not accept the basis of Dr. Kahn's argument that because the loop is needed for local service and the incremental cost of the loop does not increase to provide other services, that its full cost must be attributed to local services. This same argument could be made with respect to toll service. Since the loop is necessary to provide toll service, it could at the same time be argued that the full cost should be allocated to toll, and in so doing the incremental cost to provide local service would be zero. Moreover, since the installation of an additional subscriber loop increases the capacity available for placing and receiving all three types of calls, the telephone company cannot increase the capacity for local calls

without concurrently increasing the capacity for toll calls. OCA Stmt. 1.0. (Johnson) at p. 11. We find persuasive the arguments of Dr. Johnson that the local loop clearly fits within the definition of a joint cost since access capacity is simultaneously expanded for multiple services in fixed proportions (one more line is available in each case). Only if there is congestion at a particular time is there any tradeoff between use of the local loop for different purposes. Id. at 11.

We also reject the argument that because BUS essentially provides for network access, it is appropriate to allocate 100% of the loop costs of BUS. The "access" that is provided is not only to provide BUS but to give subscribers access to a myriad of services other than BUS as well. Without that access, customers would be unable to obtain toll service or enhanced services. It is improper to ascribe the 'access" element solely to BUS when that access is used to obtain and use a host of other non-BUS services. Sprint/United arguments that equating "Joint use" with "Joint or shared cost" is inappropriate are equally unpersuasive. A joint cost is by definition one which is incurred through the provision of multiple services that utilize the facility at issue.

January 28, 1997 Order at 82-83(emphasis added).

More recently in In the Matter of the Investigation on the Commission's Own Motion into any and All Matters Relating to Access Charge Reform and Universal Service Reform Including, But Not Limited to, High Cost or Universal Service Funding Mechanisms Relative to Telephone and Telecommunications Services within the State of Indiana Pursuant to: I.C. 8-1-2-51, 58, 59, 69; 8-1-2.6 et seq., and Other Related State Statutes, as well as the Federal Telecommunications Act of 1996 (47 U.S.C. Sec. 151, et seq.), Cause No. 407085, October 28, 1998, the Indiana Utility Regulatory Commission addressed these issues at length as follows:

The issue of what costs are common and joint has been blurred by the argument of cost causation, i.e., if one service causes a cost to be incurred and if other services require the same costs to be incurred, then only the cost causing services cost structure should reflect the cost. However, it seems reasonable that if two or more services require the presence of a particular facility in order for each of the services to function, then this particular facility would seem to be

common or joint to each of the services. Even if it were true that one of the services may have initially caused the cost, it does not alter the fact that each of the services requires the availability and use of that facility and therefore each service benefits from the existence of the facility. By simply extending the cost causation argument, there could be no common and joint costs, since it is fairly easy to assign a particular service as the causer of all these costs, especially when viewing the origins of a particular company.

Since most companies started by providing a single service, under the cost causation principle, the original service provided by a company that today provides multiple services, would have few, if any, common or joint costs, regardless of how the new services actually utilize the facilities associated with these costs. For example, if a local telephone company started as a pure local telephone company, it provided nothing but local telephone service. Therefore, in the beginning, all costs were caused by the provision of local service and any new service would not have to share in the support of these costs regardless of the benefit derived by the existence of these costs. The principle of cost causation does not allow for any change in the determination of the cost causer regardless of how many new services may be benefitting from the use of the facilities associated with these costs.

. . .

The FCC also rejected the principle of cost causation in its Order on Section 254(k). In that Order, it stated the following:

> A telecommunications carrier will typically provide [the services included in the definition of universal service], together with numerous other telecommunications services, over a single network because the total cost of providing these services on shared facilities, under shared management, is less than the cost of providing these services on separate facilities particularly under separate management operations. A substantial portion of these costs of shared facilities and operations are joint and common costs; it is difficult, if not impossible, to approximate the actual portion of such costs for which each product or service is responsible. For these types of costs, considerations other than cost causation must prevail in determining how the costs should be allocated among various services. We conclude that the second provision of section 254(k) places a continuing obligation on the [FCC] to ensure that the treatment of joint and common costs

> prescribed by our accounting, cost allocation, separations, and access charge rules will safeguard the availability of universal services. [*In re: Implementation of Section 254(k) of the Communications Act of 1934, as Amended*, Paragraph 8, at pages 6 -7, FCC 97-163 (May 8, 1997).]

A plain reading of Section 254(k) makes it clear that Congress placed the same obligation to safeguard the availability of universal services upon the state commissions.

. . .

As described in detail above, subscriber loops are jointly used by intrastate services and interstate services, and in Part 36 such costs are allocated between the federal and state jurisdictions instead of being directly assigned to a single jurisdiction. For purposes of resolving "takings" claims and "a reasonable share of the joint and common costs of facilities used to provide those services," the loop must, therefore, be included in the definition of common and joint costs in order to determine confiscation claims and to be in compliance with the second sentence of Section 254(k). We find that the direct assignment of 100 percent of loop costs to any one service would be a violation of the second sentence of Section 254(k).

. . .

We intend for this section of the Order to be used in defining the appropriate allocation of common and joint costs to services included in the definition of universal service. If any common and joint costs are allocated only to one service or group of services (e.g., services included in the definition of universal service), the result would be a clear violation of the second sentence in Section 254(k).

. . .

[T]he first alternative for allocating common and joint costs assigns the regulated intrastate services included in the definition of universal service 50 percent of such costs. In contrast, the second alternative for allocating common and joint costs assigns 50 percent of such costs to the non-regulated intrastate services not included in the definition of universal service. We believe we cannot unreasonably burden services included in the definition of universal service with 50 percent of the common and joint costs of facilities. On the other hand, even though the Conference Report underlying the Telecommunications Act of 1996 indicated that services included in the definition of universal service could face a less than reasonable allocation of common and joint costs of facilities, it is not the Commissions intent to automatically pick the allocation that would provide the smallest possible allocation of common and joint costs to the services included in

the definition of universal service. We, therefore, choose the third cost allocation method, [1/3 of costs to regulated intrastate services classified as universal service, 1/3 of costs to regulated intrastate services not classified as universal service, and 1/3 of costs to non-regulated intrastate services], as the most fair and reasonable resolution of this issue.

In addition, if the number of competitive carriers purchasing UNEs from an ILEC increases, there would be no increase in the allocation of intrastate common and joint costs, because the allocator would remain fixed. In short, a fixed allocator, whether equal or not, does not appear to produce a reasonable allocation of common and joint costs, especially in the long run.

If a fixed allocator is not appropriate, then the Commission must adopt the only other alternative, a moving allocator. However, we believe the record in the Cause is not as full or as complete regarding this issue as we would like. Therefore, in the interest of moving as expeditiously as possible to the actual production of the cost studies, which is the express desire of some of the parties, we will outline alternatives but leave the selection of a moving allocator for joint and common costs for the purposes of cost studies up to the individual ILEC so long as their selection meets the requirements of Section 254 (k). Once the cost studies have been submitted, if other parties believe that the cost allocation method selected by the ILEC does not meet the requirements of Section 254(k), the party will have an opportunity to address this issue in the ensuing cost case. Although generic rules would be easier to implement, the Commission finds that in the interim it will make determinations on a case-by-case basis.

Id. at 37-39, 40, 42, 45.

Moreover, similar conclusions have been reached by other states which have considered the same issues. In a decision of the Washington Utilities and Transportation Commission at Washington Utilities and Transportation Commission v. US West Communications, Inc., Docket No. UT-950200, 169 PUR4th 417, April 11, 1996 (US West), the Washington Commission stated:

> The Commission finds . . . that the cost of the local loop is not appropriately included in the incremental cost of local exchange service. The local loop facilities are required for nearly every service provided by the Company to a customer. Neither local service nor in-state long distance service nor interstate long

> distance nor vertical features can reach a customer without the local loop. Should USWC cease to provide any one of these services, its need for a local loop to provide the remaining services would remain. The cost of the local loop, therefore, is not incremental to any one service. It is a shared cost that should be recovered in the rates, but no one service is responsible for that recovery.

US West at 476-77 (emphasis added).

Colorado in its cost allocation regulations discussed the manner by which rates should be set in view of cost studies performed for any service. 4 CCR 723-30, Rule 4(2)(a)(iii). These Colorado regulations, as promulgated by the Colorado Public Utilities Commission, state as follows:

> As an example, consider the access loop. The access loop is not a separate service but rather is an input necessary for the provision of many telecommunications services. As such, costs associated with the access loop will not appear in the total service long run incremental cost of any single service requiring the access loop but will appear as part of the total service long run incremental cost of the entire group of services requiring the loop. Consequently, prices must be set so that the sum of the revenues from all services requiring the access loop covers not only the sum of the total service long run incremental costs for the individual services but also the shared cost of the loop.

Id. Similarly, the New Hampshire Public Utility Commission has stated as follows:

> The commission is well aware of the [New England Telephone's] claim that basic local exchange service has been and continues to be subsidized by toll. In the past, the notion of various services contributing to the support of basic exchange has been reinforced by cost studies that have served to demonstrate that the 'contribution' paid by customers of other services represents a disproportionately greater share of the company's incurred costs. These studies have served to mislead due to the company's decision to assign [dial tone] costs to local exchange services despite the fact that both interstate and state toll services are

> provided over local NTS facilities. Without local exchange facilities there would be no mechanism to connect interexchange services to the majority of customers premises. Since clearly the availability of the local network for toll use is a benefit to interexchange carriers and all toll customers, the commission believes that assignment of [dial tone] costs solely to local exchange services is unreasonable.

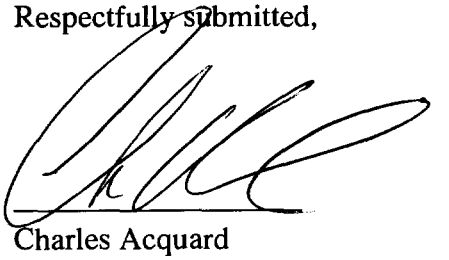
New England Telephone Generic Rate Structure Investigation, New Hampshire Public Utilities Commission, DR 89010, slip op., March 11, 1991 at 39-40.

These state regulatory decisions suggest that it is not appropriate to shift all joint and common loop costs to any USF. The logic of these decisions that find loop costs a joint and common cost of carrier access do not support the classification of all loop cost recovery in access charges as a universal service cost.

IV. CONCLUSION

NASUCA opposes the attempt to shift the recovery of access revenues into a Universal Service Fund. The FCC should reject those Comments which propose that the joint and common costs of the loop should be entirely removed from carrier access costs and shifted to a Universal Service Fund.

Respectfully submitted,



Charles Acquard
Executive Director
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January 13, 1999
50980

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	:	
	:	
Federal-State Joint Board	:	CC Docket No. 96-45
Universal Service	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, Reply Comments of the National Association of State Utility Consumer Advocates Concerning the Second Recommended Decision, upon parties of record in this proceeding and in the manner listed below.

Dated this 13th day of January, 1999.

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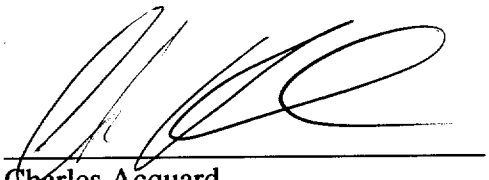

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Attachment A

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